APPEAL NO. 010532

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2001. The hearing officer resolved two of the three disputed issues in concluding that the respondent's (claimant) compensable injury of _____, did not extend to include lumbar disc disease, lumbar discogenic syndrome, nor an aggravation of the preexisting lumbar spondylosis and that the claimant suffered no disability as a result of his compensable injury. With respect to the third disputed issue, whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) became final, the hearing officer determined that it did not, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (carrier) appeals only the hearing officer's decision with respect to the finality of the certification of the claimant's date of MMI and IR. The claimant responds and urges that the Appeals Panel affirm the hearing officer's decision and order.

DECISION

Affirmed.

Approximately two weeks after the date of his injury, the claimant saw Dr. M, who examined him and assigned him a date of MMI, December 12, 1997, and an IR of 0%. With respect to whether Dr. M's certifications of MMI and IR became final, the only issue raised on appeal, the hearing officer cited Rule 130.5(e) as his guidance for determination of this issue. Rule 130.5(e) provides, in pertinent part:

> [T]he first certification of MMI and [IR] assigned to an employee is final if the certification of MMI and/or the [IR] is not disputed within 90 days after written notification of the MMI and IR is sent by the Commission [Texas Workers' Compensation Commission] to the parties, as evidenced by the date of the letter . . .[1]

While the claimant testified that he did not contest Dr. M's certifications of MMI and IR, he also testified that he never received written notification of the certifications from the Commission. While he did not specifically address it, the hearing officer apparently considered Rule 102.5(d) which reads, in pertinent part:

> [F]or the purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, *unless the great weight of evidence indicates otherwise*, the Commission shall deem the received date to be five days after the date mailed; . . .[Emphasis added.]

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[1]Rule 130.5(e) previously provided that the doctor's certification would become final if not disputed within 90 days of the claimant's receipt of written communication. This rule was amended during the pendency of this case.

Here, the hearing officer found that the evidence was more than sufficient to show that, even though it had recorded the claimant's correct address, the Commission sent Dr. M's certification of IR to the wrong address, so that the claimant did not know of it until his benefit review conference held January 25, 2001. In addition to the claimant's testimony, the record reflects that the mail from the Commission sent to the claimant was returned. Accordingly, the hearing officer observed that, not having received notice of his certifications, the claimant could not have timely contested them and for that reason, Dr. M's determinations of the claimant's date of MMI and IR could not become final.

Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge